

INCOME TAX

Federal Change (Individual)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

THE DEPARTMENT OF REVENUE)
OF THE STATE OF ILLINOIS

V.

TAXPAYER

Taxpayer(s)

No.
SSN:

Daniel D. Mangiamele
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

This matter is before this administrative tribunal as a result of a timely Protest filed by TAXPAYER (hereinafter referred to as the "taxpayer") to a Notice of Deficiency (hereinafter referred to as the "Notice") issued on August 10, 1995 for the tax year ending December 31, 1990, and 1992. The basis of the Notice is the Illinois Department of Revenue's (hereinafter referred to as the "Department") determination that the taxpayer had failed to file Illinois Income Tax returns as required by Illinois law. The Notice asserted an increased tax liability, as well as penalties pursuant to 35 ILCS 5/1001, 5/1005 and 5/804 for failure to pay the entire tax liability by the due date and failure to pay estimated tax respectively.

Formal hearing in this matter was waived by taxpayer. The issues to be resolved are:

- (1) Whether the taxpayer received proper credit for taxes withheld per W-2?

Following the submission of all evidence and a review of the record, it is recommended that the Notice of Deficiency be reduced according to the recommendations contained herein.

Findings of Fact:

- (1) The Department of Revenue EDA-24, auditor's report gave taxpayer no credit for tax as filed for the years 1991 and 1992.

- (2) The Department of Revenue issued a Notice of Deficiency for the subject taxable years showing total tax due of \$11,448.00.

(3) The taxpayer provided prior to hearing W-2 forms for 1991 showing state tax withheld in the amount of \$2,581.03 and state tax withheld for 1992 in the amount of \$2,389.26.

(4) Formal hearing in this matter was waived by taxpayer on her protest.

Conclusions of Law:

All persons who either earn or receive income in or as a resident of the State of Illinois are subject to Illinois income tax. 35 ILCS 5/201(a). The taxpayer, as Illinois residents who earned income in this state, were accordingly subject to Illinois income tax and were required to timely pay and file a return under the Illinois Income Tax Act. (35 ILCS 5/101 *et seq.*)

The Notice of Deficiency is *prima facie* correct so long as its proposed adjustments meet some minimum standard of reasonableness. Vitale v. Illinois Department of Revenue, 118 Ill. App.2d 210 (3rd Dist. 1983). In order to overcome this *prima facie* correctness, the taxpayer must present competent evidence that the proposed adjustments are incorrect. Masini v. Department of Revenue, 60 Ill. App.3d 11 (1st Dist. 1978). The taxpayer has met this burden in this case.

The taxpayer presented evidence by way of W-2 forms showing taxpayer is entitled to a tax credit against the Notice of Deficiency as issued in the amount of \$2,581.03 for 1991 and \$2,389.26 for 1992.

Based on the documentation presented I recommend that the Notice of Deficiency be reduced in accordance with the amounts indicated on the taxpayer's W-2 plus penalties and interest to date.

Daniel D. Mangiamale
Administrative Law Judge